

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FILED/ACCEPTED
OCT - 7 2009
Federal Communications Commission
Office of the Secretary

In the Matter of)	EB Docket No. 07-147
)	
PENDLETON C. WAUGH, CHARLES M.)	File No. EB-06-IH-2112
AUSTIN, and JAY R. BISHOP)	NAL/Acct. No. 200732080025
)	
PREFERRED COMMUNICATION)	FRN No. 0003769049
SYSTEMS, INC.)	
)	
Licensee of Various Site-by-Site Licenses in)	
the Specialized Mobile Radio Service.)	
)	
PREFERRED ACQUISITIONS, INC.)	FRN No. 0003786183
)	
Licensee of Various Economic Area Licenses)	
in the 800 MHz Specialized Mobile Radio)	
Service)	

To: The Commission

ENFORCEMENT BUREAU'S REQUEST REGARDING
PENDLETON C. WAUGH'S NOTICE OF APPEAL

1. On October 5, 2009, Pendleton C. Waugh provided notice to the Commission of his intention to file an additional, supplementary appeal of final rulings of the Presiding Judge in this hearing proceeding ("Supplementary Appeal"). To avoid duplicative and redundant filings, and to avoid confusion with respect to the pleading cycle in this case, the Chief, Enforcement Bureau, by her attorneys, respectfully requests that the Commission grant leave to file with the Commission one consolidated opposition to Mr. Waugh's appeals, thereby clarifying the pleading cycle. In support whereof, the following is shown.

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List A B C D E

2. On August 6, 2009, the Presiding Judge issued Order, FCC 09M-51 (ALJ, rel. August 6, 2009) (“August 6 Ruling”), approving a settlement agreement among all of the parties in this case except Mr. Waugh and terminating the above-captioned proceeding. On August 20, 2009, however, the Presiding Judge stayed his ruling.¹ Notwithstanding, Mr. Waugh, on September 8, 2009, filed an Appeal (“Initial Appeal”) with the Commission of the August 6 Ruling even though this Ruling to which Mr. Waugh took exception had been placed in abeyance. That Initial Appeal remains pending.² Subsequently, by Memorandum Opinion & Order, FCC 09M-57 (ALJ, rel. September 25, 2009) (“September 25 Ruling”), the Presiding Judge lifted his stay, reinstating the substantive August 6 Ruling. On October 5, 2009, Mr. Waugh gave notice of his intention to appeal the September 25 Ruling. Mr. Waugh characterizes his prospective appeal as “in effect, a supplement” to his initial appeal.³

3. The Bureau respectfully submits that the unusual posture of this case has essentially disrupted the normal pleading cycle for appeals under Section 1.302 of the Commission’s Rules.⁴ Section 1.302 contemplates a single pleading cycle in which an appeal, an opposition, and a reply may be filed. Here, however, there are arguably two pleading cycles in the same case,⁵ involving the termination of this proceeding. The

¹ See Order, FCC 09M-53 (ALJ, rel. August 20, 2009).

² The Bureau subsequently requested leave of the Commission to interpose an opposition to Mr. Waugh’s Initial Appeal at such time, among other events, that the stay of August 6 Ruling was lifted. See Enforcement Bureau’s Request Regarding Pendleton C. Waugh’s Appeal, filed September 22, 2009. In that Request, the Bureau noted that Mr. Waugh’s Initial Appeal was not yet ripe for consideration. Thus, we believe that no Opposition is currently required in any event. Out of an abundance of caution, however, the Bureau is filing the instant pleading to clarify the pleading cycle.

³ See Notice of Appeal, filed by Pendleton C. Waugh, on October 5, 2009, at 1 n.1.

⁴ See 47 C.F.R. § 1.302.

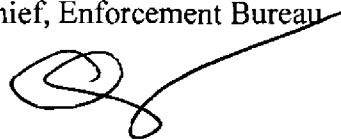
⁵ The filing of a second appeal presumably would generate a second pleading cycle that overlaps with the first.

Bureau submits that it would be duplicative, redundant, and confusing for the Commission to entertain two sets of appeals, oppositions, and replies involving the termination of a single hearing proceeding.

4. Granting the Bureau's request would bring clarity and order to the appellate process. Affording the Bureau the opportunity to file one consolidated opposition to both of Mr. Waugh's appeals within 15 days of the filing by him of his second, supplementary appeal would restore harmony to a pleading cycle otherwise disrupted by the unusual procedural history recited above. In addition, given Mr. Waugh's indication that his anticipated filing will supplement the Initial Appeal, allowing the Bureau to submit one consolidated opposition within 15 days of his supplemental filing becomes even more compelling. The Bureau notes that such a course would not prejudice any other party. In this regard, each of the other parties presumably would also file, at its discretion, one consolidated opposition, to which Mr. Waugh would have the opportunity to interpose one reply.

5. Accordingly, the Bureau respectfully requests that the Commission grant the Bureau leave to file one consolidated opposition to Mr. Waugh's Initial and Supplementary Appeals within 15 days from the date of the filing of his Supplementary Appeal, as provided for in Section 1.302 of the Commission's Rules.⁶

Respectfully submitted,
P. Michele Ellison
Chief, Enforcement Bureau

A handwritten signature in black ink, appearing to read "Gary A. Oshinsky", with a long, sweeping horizontal stroke extending to the right.

Gary A. Oshinsky
Anjali K. Singh
Attorneys, Investigations and Hearings Division

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October 7, 2009

⁶ The Bureau calculates Mr. Waugh's Supplementary Appeal to be due on October 26, 2009, and the Bureau anticipates filing its consolidated pleading within 15 days of when Mr. Waugh submits such filing.

CERTIFICATE OF SERVICE

Rebecca Lockhart, a Paralegal Specialist in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 7th day of October 2009, sent by first class United States mail or electronic mail, as noted, copies of the foregoing

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